

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BIG BOB'S CONTRACTORS, INC.

and

Case 12--CA--14050

INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL AND ORNAMENTAL  
IRON WORKERS, LOCAL NO. 808

*April 17, 1991*  
DECISION AND ORDER

*By Members Neveny, Olcott, and Raudabaugh*  
Upon a charge filed by the Union on July 9, 1990, the General Counsel of

the National Labor Relations Board issued a complaint against Big Bob's Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 26, 1990, the General Counsel filed a Motion for Summary Judgment. On December 31, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Office, by letter dated October 31, 1990, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## Findings of Fact

## I. Jurisdiction

The Respondent, a Florida corporation with an office and place of business in Orlando, Florida, is engaged in the business of contracting steel reinforcement rod installation work at construction sites. During the 12 months preceding issuance of the complaint, in the course and conduct of its business operations, the Respondent performed services valued in excess of \$50,000 for Lee Lewis Construction, Inc., which meets other than an indirect standard for assertion of jurisdiction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

About March 1990, the Respondent and the Union entered into a "'project'" collective-bargaining agreement that by its terms remained in effect until September 30, 1990. In the agreement, consistent with the provisions of Section 8(f) of the Act, the Respondent lawfully recognized the Union as the representative of its employees in the unit for purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment. The Respondent agreed to be bound by all the terms and provisions of the Greater Orlando Area and Vicinity Iron Workers Agreement.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All iron worker employees of the Employer employed at Respondent's Disney World, Orlando, Florida jobsite but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

At all times between March and September 30, 1990, the Union, by virtue of Section 8(f) of the Act and the principles set forth in John Deklewa & Sons, 282 NLRB 1375 (1987), was the exclusive representative of the unit employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. The Violation

Since May 21, 1990, the Respondent repudiated and refused to adhere to the March 1990 collective-bargaining agreement or its terms relating to, inter alia, wages, various health, welfare and benefit contributions, and hiring hall provisions.

## Conclusions of Law

By repudiating and refusing to adhere to the March 1990 collective-bargaining agreement since May 21 until the September 30, 1990 expiration of the agreement, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make the employees whole, in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), for any losses they may have suffered as a result of the Respondent's failure to adhere to the agreement from May 21 to September 30, 1990, with interest on any amounts due paid in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). In accordance with Deklewa, supra, this make-whole remedy does not extend beyond the expiration date of the agreement. We shall also order the Respondent to make the trust funds whole. The question whether any additional amounts must be paid to the trust funds in excess of the contributions that may be owed shall be left to the compliance stage of this proceeding. Merryweather Optical Co., 240 NLRB 1213 (1979). The Respondent must reimburse any employees for any expenses ensuing from any failure to make contributions to any funds established by the agreement, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

ORDER

The National Labor Relations Board orders that the Respondent, Big Bob's Contractors, Inc., Orlando, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating and refusing to adhere to its collective-bargaining agreement with the Union from May 21 until the September 30, 1990 expiration date.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the collective-bargaining agreement from May 21 until September 30, 1990.

(b) In accord with the remedy section of this decision, make whole unit employees and trust funds for any losses directly attributable to the Respondent's failure to apply the terms of the collective-bargaining agreement.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of the Order.

(d) Post at its facility in Orlando, Florida, copies of the attached notice marked "'Appendix.'"<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 17, 1991

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Dennis M. Devaney, Member

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Clifford R. Oviatt, Jr., Member

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John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT repudiate and refuse to adhere to our collective-bargaining agreement with the International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 808 through the September 30, 1990 expiration date.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the above collective-bargaining agreement from May 21 to September 30, 1990.

WE WILL make our employees whole with interest for any losses of wages and benefits they have suffered as a result of our failure to adhere to our collective-bargaining agreement with the Union until it expired on September 30, 1990, including, if appropriate, making contributions to employee benefit trust funds established by the agreement and reimbursing employees for any expense ensuing from any failure to make those contributions.

BIG BOB'S CONTRACTORS, INC.

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(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 700 Twiggs Street, Suite 511, Tampa, Florida 33620-4081, Telephone 813--228--2662.